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**999 E Street, N.W.
Washington, D.C. 20463**

2016 DEC 15 PM 12: 03

FIRST GENERAL COUNSEL'S REPORT

CELA

MUR 7028

DATE COMPLAINT FILED: March 21, 2016

DATE OF NOTIFICATIONS: March 24, 2016

July 20, 2016

DATE OF LAST RESPONSE: September 6, 2016

DATE ACTIVATED: June 10, 2016

ELECTION CYCLES: 2014, 2015

EXPIRATION OF SOL: Earliest: January 31, 2019

Latest: December 31, 2020

COMPLAINANT:

Rupert Baptiste

RESPONDENTS:

Plumbers & Pipefitters Local Union No. 9

**Plumbers & Pipefitters Local Union No. 9 PAC
and Michael Maloney in his official capacity as
treasurer**

**Plumbers & Pipefitters Local Union No. 9 Industry
Advancement Fund**

**RELEVANT STATUTES
AND REGULATIONS:**

52 U.S.C. § 30118(a)

52 U.S.C. § 30118(b)(2)(C)

52 U.S.C. § 30118(b)(3)(A)-(C)

52 U.S.C. § 30118(b)(4)(A)

11 C.F.R. § 104.1

11 C.F.R. § 104.8(b)

11 C.F.R. § 114.2(b), (d)

11 C.F.R. § 114.5(a)(1), (2)-(5)

11 C.F.R. § 114.5(e)(3)

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

Complainant Rupert Baptiste ("Baptiste") alleges that Plumbers & Pipefitters Local Union No. 9 ("Union"), its separate segregated fund, the Plumbers and Pipefitters Local Union No. 9 Political Action Committee ("PAC"),¹ and two other entities affiliated with the Union, the Industry Advancement Fund ("IAF") and the Benevolency Fund ("BF"), improperly deducted funds from his pay without authorization. Complainant also alleges that despite his written request for a refund of \$7,702.70 for various unauthorized deductions between 2014 and 2015, Respondents have failed to issue the refund.

Respondents do not state or provide any documentation demonstrating that they obtained Baptiste's authorization to deduct funds for PAC contributions. Respondents state only that they reimbursed any union member who opted out of voluntary contributions to the PAC or other funds in writing, and that they so informed Baptiste on several occasions. Respondents also deny receiving Baptiste's refund request before the complaint's filing.

Because the available information suggests that the Union may be using a reverse check-off system for its PAC contributions with regard to Baptiste and other union members, we recommend that the Commission find reason to believe that the Union and the PAC violated the Act and Commission regulations.² We also recommend that the Commission authorize an

¹ The PAC's latest Amended Statement of Organization reflects that it is a separate segregated fund connected to the Union and affiliated with a labor organization named the United Association of Political Education Committee (United Association of Journeyman and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada) ("UAPEC"). See Amended Statement of Organization, Plumbers and Pipefitters Local Union 9 PAC (Oct. 13, 2016); Amended Statement of Organization, UAPEC (May 9, 2014). Further, a review of the PAC's disclosure reports reflect that it made contributions to federal candidates and committees in 2014 and 2015. See e.g., October 2014 Quarterly Report, Plumbers and Pipefitters Local Union No. 9 (Oct. 6, 2014); 2015 Mid-Year Report, Plumbers and Pipefitters Local Union No. 9 PAC (July 6, 2015).

² As to the payroll deductions used as contributions to the IAF and BF, we make no recommendations due to the Commission's apparent lack of jurisdiction over this activity. Neither fund is registered as a political committee with the Commission, nor do they appear to have engaged in activity that would meet the definition of a political committee under the Act, and the available information suggests that the purpose of these two funds is unrelated to

1 investigation to determine if the Union obtained the required written authorizations from its
2 members, including Baptiste, prior to deducting funds for contributions to its PAC.

3 II. FACTUAL AND LEGAL ANALYSIS

4 A. Facts

5 Complainant, who has been a member of the Union since 1997, alleges that deductions
6 totaling \$7,702.70 were taken from his pay for contributions to various funds in 2014 and 2015,
7 including what he termed "Target," "PAC," and "Benevolent" funds.³ The contributions made to
8 the PAC from Baptiste's payroll deductions during 2014 and 2015 total \$1,485.95. A review of
9 the PAC's disclosure reports indicates that Baptiste has regularly contributed to the PAC since he
10 transferred his membership to the Union in 1997, and he continued to make PAC contributions in
11 2016.⁴

12 The Union's initial response denied receiving Baptiste's request for a refund of
13 contributions made to the PAC, IAF, and BF and instead asserts that it would have honored his

influencing federal elections. *See* Response (Apr. 4, 2016), Attach. at 8-10; 54-94. *See also* 11 C.F.R. § 102.1(c) (funds established solely for the purpose of financing political activity in connection with state or local elections need not file Statements of Organization with Commission). The Commission database does not reflect any contributions or disbursements made by either entity in connection with any federal elections.

³ Although Baptiste refers to a "Target" fund in the Complaint, the available information suggests that the Target Fund is the IAF fund. The Complaint contains a chart reflecting the following amounts allegedly deducted as contributions: Year 2014 - \$2,516 (Target,) \$754.80 (PAC) and \$880.60 (Benevolent); Year 2015 - \$2,089 (Target), \$731.15 (PAC) and \$731.15 (Benevolent). *See* Compl., Attach. Also attached to the complaint is a letter from Baptiste's counsel to his employer (Furino and Sons, Inc.) requesting the refund of the same contributions and requesting that the employer provide evidence of authorization to deduct those funds. *See id.*, Attach. (Ltr. from Stacy A. Santola, Esq. to Furino & Sons, Inc. (Feb. 3, 2016)). The Complaint also contains copies of Baptiste's pay stubs and notations of the different deductions. *Id.*

⁴ *See e.g.*, July 2016 Quarterly Report, Plumbers and Pipefitters Local Union No. 9 PAC (July 8, 2016); 2015 Mid-Year Report, Plumbers and Pipefitters Local Union No. 9 PAC (July 2, 2015); July 2014 Quarterly Report, Plumbers and Pipefitters Local Union No. 9 PAC (July 10, 2014). The Complaint does not indicate why Baptiste alleges unauthorized deductions only for 2014 and 2015 when his PAC contributions date back to 1998.

1 request had it been received.⁵ A joint response (Resp. #2) submitted on behalf of the Union, the
2 PAC, and the IAF fund similarly denies that the Union received Baptiste's refund request and
3 asserts that the Union would have honored the request as it had done in the past for other union
4 members.⁶ This Response further states that, given the pending status of the Complaint, it would
5 provide reimbursement to Baptiste in "a manner satisfactory to the Commission."⁷ The
6 responses do not state that PAC deductions were made in accordance with Baptiste's voluntary
7 authorization.

8 B. Analysis

9 Under the Federal Election Campaign Act of 1971, as amended (the "Act") and the
10 Commission's regulations, labor organizations are prohibited from making contributions in
11 connection with a federal election, and a political committee is prohibited from knowingly
12 accepting or receiving such contributions.⁸ Labor organizations are permitted to establish and
13 solicit political contributions to an SSF.⁹ A labor organization or its SSF may only solicit
14 contributions from the organization's members and executive or administrative personnel, and
15 their families.¹⁰

⁵ Resp., generally (Apr. 4, 2016). The Response also provides a variety of documents regarding Baptiste, the majority of which are unrelated to the complaint allegations, except for a copy of the Union's Collective Bargaining Agreement (CBA) and a copy of a union resolution establishing the IAF. *Id.*, Attach. at 8-10; 54-94. Articles XXVIII and XXIX of the CBA state, in pertinent part, that the IAF and Benevolence funds will be deducted from the employee's net pay, maintained in a separate segregated account in conformity with state and federal law, and that the employee's check-off authorization should be voluntarily given by the employee without coercion by the Union. *Id.*

⁶ Resp. #2 at 1 (Sept. 6, 2016)

⁷ Resp. #2 at 1-2.

⁸ 52 U.S.C § 30118(a); 11 C.F.R. § 114.2(b), (d).

⁹ *Id.* § 30118(b)(2)(C); 11 C.F.R. § 114.1(a)(2)(iii).

¹⁰ *Id.* § 30118(b)(4)(A)(ii); *Id.* § 114.5(g)(2).

1 An SSF is prohibited from making contributions or expenditures "by utilizing money or
2 anything of value secured by physical force, job discrimination, or financial reprisals, or the
3 threat of force, job discrimination, or financial reprisals; or by dues, fees, or other moneys
4 required as a condition of membership in a labor organization or as a condition of employment
5 " ¹¹ All contributions to an SSF must be voluntary and without coercion. ¹² Further, an SSF
6 is required to report the contributions it receives, including those made via payroll deduction, and
7 it must maintain records for matters required to be reported for three years after the report is
8 filed. ¹³

A labor organization may use a payroll-deduction or check-off system to collect contributions to its SSF.¹⁴ A contributor, however, must affirmatively authorize such payroll deductions from the contributor's wages.¹⁵ A reverse check-off, by which SSF contributions are deducted from wages unless an employee opts out, is "per se violative of section 30118(b)(3)(A)'s prohibition."¹⁶ To ensure that contributions solicited for an SSF are voluntary, the Act and the Commission's regulations make it unlawful for any person to solicit a contribution to an SSF without informing the employee of the political purpose of the SSF and of

¹¹ *Id.* § 30118(b)(3)(A); *see also Id.* § 114.5(a)(1).

¹² *Id.* § 30118(b)(3); *Id.* § 114.5(a); *see also* Advisory Op. 2003-14 at 3 (Home Depot).

¹³ *Id.* § 30104; 11 C.F.R. §§ 104.14(b), 104.8(b), 114.5(e)(3).

¹⁴ See generally Advisory Opinion 2013-12 (SEIU and SEIU COPE) at 3.

¹⁵ See 11 C.F.R. § 114.2(f)(4)(i). See also Statement of Policy; Recordkeeping Requirements for Payroll Deduction Authorizations, 71 Fed. Reg. 38,513 (July 7, 2006). While certain other forms of documentation may serve as proof of payroll documentation authorization, signed payroll deduction forms may serve as the best documentation that a deduction was authorized at a particular time for a particular amount. See *id.*

¹⁶ *FEC v. Nat'l Educ. Ass'n*, 457 F. Supp. 1102, 1110 (D.D.C. 1978); *see also* Advisory Op. 2001-04 (MSDWPAC) (Apr. 19, 2001); *see also* MUR 4351 (UMWA) (the Commission found reason to believe based on the apparent use of a reverse check-off system, but took no further action after the investigation demonstrated that the deductions were not deposited in account used to make federal contributions).

1 the right to refuse to contribute to the SSF without reprisal.¹⁷ The term "person" includes a
2 corporation or a labor organization.¹⁸

3 Respondents do not rebut Baptiste's allegation that he did not voluntarily authorize the
4 Union to deduct funds from his pay for the \$1,485.95 in PAC contributions shown on the chart
5 attached to the Complaint. The Respondents also provided no information to demonstrate that
6 they gave Baptiste an opportunity to affirmatively opt for the payroll deductions, as required by
7 the Act. Without information to show that Baptiste voluntarily authorized the deductions and
8 subsequent PAC contributions, we conclude that there is reason to believe that the PAC
9 knowingly accepted contributions totaling \$1,485.95 that were not voluntarily given by Baptiste,
10 nor has it refunded those contributions to Baptiste.¹⁹

11 Based on the available information, we recommend that the Commission find reason to
12 believe that the Plumbers and Pipefitters Local Union No. 9 violated 52 U.S.C.
13 § 30118(b)(3)(A)-(C) and 11 C.F.R. § 114.5(a)(2)-(5) by failing to obtain the appropriate
14 voluntary authorization from Baptiste for the payroll deductions. We further recommend that the
15 Commission find reason to believe that the Plumbers and Pipefitters Local Union No. 9 Political
16 Action Committee and Michael Maloney in his official capacity as treasurer violated 52 U.S.C.
17 § 30118(b)(3)(A) and 11 C.F.R. § 114.5(a)(2)-(5).

¹⁷ *Id.* § 30118(b)(3)(B)-(C); *Id.* § 114.5(a)(3)-(4)). In addition, if the SSF or connected organization suggests a guideline for contribution amounts, the solicitation must state that the guideline is merely a suggestion, that the member is free to contribute more or less than the guideline suggests, and that the union will not favor or disadvantage anyone because of the amount of the contribution or a decision not to contribute. 11 C.F.R. § 114.5(a)(2), (5). A solicitation can be coercive without the requisite notices. *See* Conciliation Agreement IV.7, MUR 5337 (First Consumers Nat'l Bank) (conciliating prohibited facilitation of national bank contributions to a state SSF).

¹⁸ *Id.* § 30101(11).

¹⁹ There have been no allegations of coercion or any information to suggest that coercion was involved in this matter.

III. INVESTIGATIVE PLAN

We recommend that the Commission authorize an investigation to determine the procedure the Union used, if any, to obtain authorizations from Baptiste and other members for payroll deductions to be contributed to its PAC, including whether it used a reverse check-off system. If so, we intend to seek information regarding the amount of contributions made to the PAC via such a reverse check-off system. Although we hope to obtain the required information through informal discovery, we recommend that the Commission authorize the use of compulsory process.

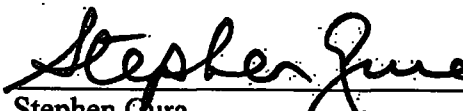
IV. RECOMMENDATIONS

1. Find reason to believe that Plumbers and Pipefitters Local Union No. 9 violated 52 U.S.C. § 30118(b)(3)(A)-(C) and 11 C.F.R. § 114.5(a)(2)-(5).
2. Find reason to believe that Plumbers and Pipefitters Local Union No. 9 Political Action Committee and Michael Maloney in his official capacity as treasurer violated 52 U.S.C. § 30118(b)(3)(A) and 11 C.F.R. § 114.5(a)(2)-(5).
3. Authorize the use of compulsory process
4. Approve the Factual and Legal Analysis.
5. Approve the appropriate letters.

Lisa J. Stevenson
Acting General Counsel

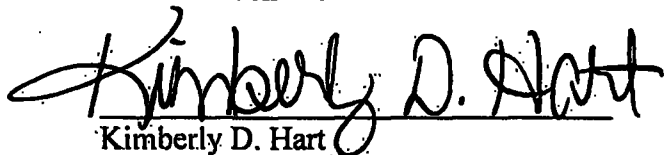
Kathleen M. Guith
Acting Associate General Counsel for
Enforcement

12.15.16
Date


Stephen Cura
Deputy Associate General Counsel
For Enforcement



Mark Shonkwiler
Assistant General Counsel



Kimberly D. Hart
Staff Attorney

Attachment
Factual and Legal Analysis

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